Supreme Court, U.S.
FILED
APR 15 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1536

In The

Supreme Court of the United States

October Term, 1987

JACKIE D. SUGGS and
DEBRA SUGGS,
Petitioners,

vs.

STATE FARM FIRE AND CASUALTY COMPANY
and
STATE FARM GENERAL INSURANCE COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STANLEY C. SAGER
SAGER, CURRAN, STURGES &
TEPPER, P.C.
P. O. Box 3587
Albuquerque, New Mexico 87190
(505) 884-5100
Counsel of Record for Respondents

MATTHEW P. HOLT AND
ERIC SCOTT JEFFRIES
SAGER, CURRAN, STURGES
& TEPPER, P.C.
P. O. Box 3587
Albuquerque, New Mexico 87190
(505) 884-5100
Co-Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTION PRESENTED

The Suggs' Petition states the questions presented in a manner inconsistent with the facts and the opinion of the Court of Appeals. The following is a more accurate statement of the issue:

Should a finding of bad faith, which is defined as an unreasonable or frivolous refusal to pay a claim for insurance benefits, be allowed to stand where the facts are such that reasonable minds could find that the insureds intentionally burned their trailer so as to obtain insurance monies?

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SUMMARY OF THE ARGUMENTS

1. The Tenth Circuit neither found that there was substantial conflicting evidence on the issue of bad faith nor did it reweigh the evidence. Instead, the Court of Appeals held that an award of damages for bad faith must fall, as a matter of law, if reasonable minds could find that there was no coverage under the policy. The Tenth Circuit then examined the evidence to determine if State Farm had presented such evidence and found it had.

2. The decision of the Tenth Circuit did not infringe on the Petitioners' rights under the Seventh Amendment. The Tenth Circuit's review, predicated upon proper reservation of the issue below, was in accord with the common law which is embodied in the Seventh Amendment.

3. The decision of the Tenth Circuit was not contrary to the *Erie* doctrine. Its ruling was not based on conflicting evidence of bad faith, but on substantial evidence of no coverage. Its decision was consistent with, if not mandated by, a previous case decided by the New Mexico Supreme Court. Further, its decision was in accord with cases from a number of jurisdictions.

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ARGUMENT

I. THE DECISION OF THE TENTH CIRCUIT DID NOT DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BUT, INSTEAD, WAS IN CONFORMITY WITH THE LAW OF NEW MEXICO AND VIRTUALLY EVERY JURISDICTION WHICH HAS ADDRESSED THE ISSUE THAT WAS BEFORE IT.

Petitioners' interpretation of the Tenth Circuit's Opinion is in error. The opinion, in relevant part, simply finds that an inappropriate legal standard was applied by the trial court and that, as a matter of law, application of the appropriate standard required reversal. The Tenth Circuit did not reweigh the evidence, nor did it wrongfully impinge upon the jury's role.

A. The Tenth Circuit Established A Point Of Law; It Did Not Reweigh The Evidence.

Petitioners' arguments are based upon the flawed premise that the Tenth Circuit reweighed the evidence, in defiance of the jury's proper role. This is not the case. The Tenth Circuit found a legal argument to be persuasive.

The issue involved in the Petition does not concern itself with whether State Farm should have paid the claim, but with whether State Farm's refusal to pay the claim was frivolous or unfounded. *State Farm General Insurance Co. v. Clifton*, 86 N.M. 727, 527 P.2d 798 (1974). Not every failure to honor a valid claim for insurance benefits is frivolous or unfounded. *See e.g., Ambassador In-*

surance Co. v. St. Paul Fire & Marine Insurance Co., 102 N.M. 28, 690 P.2d 1022 (1984). To determine whether a denial is frivolous or unfounded, courts look to the litigation which inevitably follows the denial; if there is a bona fide dispute between the parties, an award of bad faith damages is inappropriate. *See, Smith v. Union Mutual Life Insurance Co.*, 726 F.2d 437 (8th Cir. 1984); *Safeco Insurance Company of America v. Guyton*, 692 F.2d 551 (9th Cir. 1982); *Marcus v. St. Paul Fire & Marine Insurance Co.*, 543 F. Supp. 253 (M.D. Ala. 1982); *Southeast Nursing Home v. St. Paul Fire & Marine Insurance Co.*, 559 F. Supp. 883 (N.D. Ala. 1982); *Casson v. Nationwide Insurance Co.*, 455 A.2d 361 (Del. Super. 1982); *First of Georgia Insurance Co. v. Worthington*, 165 Ga. App. 303, 299 S.E.2d 567 (1983); *Porter v. Utah Home Fire Insurance Co.*, 58 Or. App. 729, 650 P.2d 130 (1982); *Sisk v. Valley Forge Insurance Co.*, 640 S.W.2d 844 (Tenn. App. 1982); *St. Paul Fire & Marine Insurance Co. v. Cumiskey*, 665 P.2d 223 (Mont. 1983); *Phil Schroeder, Inc. v. Royal Globe Insurance Co.*, 99 Wash. 2d 65, 659 P.2d 509 (1983).

The issue before the Tenth Circuit was whether, as a matter of law, a bona fide dispute existed between State Farm and the Suggs. The proper standard to determine whether such a dispute exists was described by the New Mexico Supreme Court in *Anderson v. Dairyland Insurance Co.*, 97 N.M. 155, 637 P.2d 837 (1981). The insurer refused to pay for medical expenses incurred by the insured, alleging that the policy of insurance had expired at the time of the accident. The insured argued that the insurer's agent had purported to sell a policy which would not have expired and that the insurer was estopped from

asserting the defense because it was due solely to its agent's error.

The trial court directed a verdict for the insured on the question of coverage and instructed the jury on punitive damages. Dairyland appealed from a judgment of compensatory and punitive damages. The Supreme Court held the trial court erred in directing a verdict, reasoning that it was a question of fact as to whether the insurer had corrected its agent's error by sending a policy which set forth the expiration date. Turning then to the question of punitive damages, the court held that issue should not have been presented to the jury: "We agree that here, where the verdict as to liability for compensatory damages was improperly directed, giving an instruction on punitive damages was inappropriate." 97 N.M. at 158, 637 P.2d at 840.

The actions of the insurance company in *Anderson* were not in dispute. The sole jury question vis-a-vis coverage was whether the insured could reasonably have relied on the agent's representations concerning the duration of the policy or whether he should have read the policy himself. A directed verdict was improper because reasonable minds could have found for the insurer. Similarly, the issue of punitive damages was improperly before the *Anderson* jury because reasonable minds could have found for the insurer on the issue of liability.

The lesson from *Anderson* is that bad faith damages cannot be submitted to the jury where the steps the insurance company has alleged that it has taken are not disputed, and, based upon the evidence developed through the insurer's investigation, a jury could find that there

is no coverage.[1] The Tenth Circuit did not review the evidence to determine if there was substantial evidence to support the jury's award but, based on the standard adopted in *Anderson*, it reviewed the record to determine if there was evidence upon which the jury could have found for State Farm on the underlying coverage issue.

The test employed by the Tenth Circuit is not only the natural extension of *Anderson*, but is the test that has been employed by a number of courts to determine whether a claim for bad faith damages for failure to pay an insurance claim should be submitted to the jury. In *Watson v. State Farm Fire & Casualty Co.*, 122 Ill. App. 3d 559, 461 N.E.2d 57 (Ill. App. 3d Dist. 1984), the insured moved for a directed verdict on the issue of intentional fire setting. The court determined that the fire had not been set intentionally and the directed verdict was granted. The case was given to the jury for the sole purpose of determining whether the insurer acted unreasonably. On appeal from an award of punitive damages, the Court of Appeals reversed. The Court of Appeals' approach was twofold: first, it found that there was evidence upon which a jury

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[1] *State Farm Fire & Casualty Co. v. Price*, 101 N.M. 438, 684 P.2d 524 (Ct. App.), *cert. denied*, 101 N.M. 362, 683 P.2d 44 (1984), relied upon by the Petitioners, does not stand for a different proposition. The Court of Appeals decision in *Price* held only that there was sufficient evidence that the insurer intentionally avoided its duty to defend an action against its insured. *Price*, unlike this case, did not involve a first-party claim. Even so, *Price* reaffirmed the principal that where reasonable minds cannot differ, the court has a duty to take the case from the jury. 101 N.M. at 441, 684 P.2d at 527, citing *Owen v. Burn Construction Co.*, 90 N.M. 297, 563 P.2d 91 (1977). The Tenth Circuit, in this case, simply found that reasonable minds could conclude that there was no coverage.

could find that the insureds had intentionally set fire to their home. Accordingly, it held that the directed verdict in favor of the insured was error. From this, the court reasoned that the case presented necessarily involved a "bona fide" dispute:

> Because we have previously determined that the directed verdict in favor of [the insured] was error, we must conclude that the [insurer's] assertion of arson as a reason for denial of liability was not unreasonable or vexatious but a legitimate policy defense based upon the [insurer's] investigation of the fire.

461 N.E.2d at 61. *Watson* is not only directly on point, but it is also persuasive. The court there did not weigh the evidence to determine whether there was substantial evidence to support a jury verdict of punitive damages. Instead, it reviewed the evidence to determine whether there was substantial evidence upon which a jury *could* have found for the insurer on the issue of coverage. If there was such substantial evidence, the necessary implication is that reasonable minds could have found the insurer was not only reasonable in denying payment, but that it was correct. Accordingly, allowing the question of bad faith damages to go to the jury was in error.

The Supreme Court of Alabama adopted the same reasoning in *National Savings Life Insurance Company v. Dutton*, 419 So. 2d 1357 (Ala. 1982):

> In the normal case in order for a plaintiff to make out a prima facie case of bad faith refusal to pay an insurance claim, the proof offered must show that the plaintiff is entitled to a directed verdict on the contract claim and, thus, entitled to recover on the contract claim as a matter of law. Ordinarily, if the

> evidence produced by either side creates a fact issue with regard to the validity of the claim and, thus, the legitimacy of the denial thereof, the tort claim must fail and should not be submitted to the jury.

419 So. 2d at 1362. *Accord, Reserve Life Insurance Co. v. McGee,* 444 So. 2d 803 (Miss. 1983) (if the undisputed facts present a jury question as to coverage, the trial court must direct a verdict as to punitive damages); *John Hancock Mutual Life Insurance Co. v. Poss,* 154 Ga. App. 272, 267 S.E.2d 877 (1980) (trial court properly refused to direct verdict in favor of insured as to coverage. On appeal, the court held that the denial of the directed verdict "fully supports the conclusion by the trial court that there was no bad faith." 267 S.E. 2d at 883).

If reasonable minds could have found that State Farm was correct in alleging that there was no coverage, it necessarily follows that it presented a bona fide dispute which precludes imposition of bad faith damages. The issue before the Tenth Circuit, therefore, was whether there was substantial evidence at the time of denial such that a jury *could* have found for State Farm on its defenses.

B. The Tenth Circuit Properly Applied The Law In Concluding That, As A Matter Of Law, State Farm Did Not Act In Bad Faith.

The Tenth Circuit painstakingly reviewed the trial transcript to determine whether there was substantial evidence that would have supported a finding that there was no coverage. It found such evidence, in abundance.

One of State Farm's reasons for failing to pay was its reliance upon the defense of intentional fire setting.[2]

A defense of intentional fire setting is rarely proven by direct evidence. Accordingly, a circumstantial case of intentional fire setting can be made by establishing (1) the fire was intentionally set; (2) the insured had a motive to set the fire; and (3) the insured had the opportunity to set the fire. *Boone v. Royal Indemnity Co.*, 460 F.2d 26 (10th Cir. 1972). The circumstantial evidence of an intentional fire was clearly sufficient to go to a jury.

INTENTIONAL BURNING

State Farm engaged cause and origin experts immediately after the fire (T. 680, 684). The experts reported finding low burn patterns and V-burn patterns, which they described as evidence of an intentionally set fire (T. 389, 590, 719, 1179). They also reported evidence of a fire that burned hotter and more quickly than is normal in an accidental fire (T. 588). State Farm also learned that a fire fighter observed a flaming liquid dripping from the trailer (T. 973, 978). Samples taken from the scene proved positive for charcoal lighter fluid and diesel fuel (T. 607-619, 1043). The investigators also reported that no evidence of electrical malfunction or other accidental

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[2]The Suggs were entitled to nothing, and State Farm was under no obligation to make any payment under the policy of insurance, if the jury had concluded that the Suggs intentionally burned their own trailer. *Jamaica Time Petroleum, Inc. v. Federal Insurance Co.*, 366 F.2d 156 (10th Cir. 1966).

cause could be found (T. 720, 1046, 1149, 1192).[3] The Suggs' counsel never suggested, before denial, that the fire was caused by electrical problems. (T. 1585).

OPPORTUNITY

Jackie Suggs was the last person known to be in the trailer (T. 148). He left no more than fifteen minutes before the fire was first discovered (T. 165, 992).

MOTIVE

The Suggs' sole income was from Jackie Suggs' job as a roughneck on an oil rig. For several months prior to the fire, they had been unable to meet their financial obligations (T. 106-110). To compound the problem, Mr. Suggs lost his job just two months before the fire. Expenditures and obligations exceeded his unemployment compensation income by $2,200 per month for the two

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[3]Only after the claim was denied and the instant lawsuit was filed did any exculpatory evidence come to light; the Plaintiffs' electrical experts suggested the cause of the fire was an electrical malfunction. State Farm, however, was not provided with a realistic opportunity to correct any error that may have been made: the pending suit sought $2,000,000 in punitive damages, and the Plaintiffs advised that they would not settle their claim for less than $200,000 in punitive damages. Surely no argument can be made that it was bad faith to refuse to pay $200,000 for a $26,000 trailer, when all of State Farm's previous acts were based on both strong and uncontradicted evidence of an intentionally set fire.

months he was on unemployment compensation before the fire (T. 46, 105, 116). In addition to debts for which he was to make regular payments, Mr. Suggs had additional debts of $5,000 (T. 110, 115). Moreover, before the claim was denied, the Suggs' attorney admitted that Mr. Suggs was not in good financial condition (T. 1575, 1600).

The Suggs' precarious financial situation is evidence of motive sufficient to allow reasonable minds to believe the Suggs may have destroyed the trailer for profit. *See Jamaica Time Petroleum, Inc. v. Federal Insurance Co.*, 366 F.2d 156 (10th Cir. 1966) (in reciting the reasons justifying the jury's finding that the insured had, indeed, destroyed his own airplane, the Tenth Circuit noted that "[a]t the time of the purchase and destruction of the airplane the insured was in an unhealthy financial position." *Id.*, at 159. *See also, Miele v. Boston Insurance Co.*, 288 F.2d 178 (8th Cir. 1961) (insurance policy void because of the insured's misrepresentations when insured, after a loss, described a favorable financial position to the insurer. The court held that "[a]ppellant's affirmative misrepresentation as to his business making money . . . rendered the insurance obtained unenforceable." *Id.*, at 182, *citing Buck v. Stuyvesant Insurance Company of City of New York*, 209 Mo. App. 302, 237 S.W. 840 (1922); *Elgi Holding, Inc. v. Insurance Company of North America*, 551 F.2d 957 (2d Cir. 1975) (evidence of the insured's financial status admissible as circumstantial evidence that the insured had intentionally set the fire himself); *L & S Enterprises Company v. Great American Insurance Co.*, 454 F.2d 457 (7th Cir. 1971) (economic instability of a business may be a factor evidencing the insured's intent to burn the premises); *Esquire Restaurant, Inc. v. Com-*

monwealth Insurance Company of New York, 393 F.2d 111 (7th Cir. 1968) (the financial condition of the insured was material as it represented evidence of possible motive), *citing Stein v. Girard Insurance Company of Philadelphia*, 259 F.2d 764 (7th Cir. 1958); *McIntosh v. Eagle Fire Company of New York*, 325 F.2d 99 (8th Cir. 1963) (evidence of financial instability is circumstantial evidence material to insured's case).

All of this combined to demonstrate that State Farm had substantial evidence from which it could reasonably conclude that the Suggs had intentionally burned the property. State Farm again notes that whether Mr. Suggs actually set fire to the trailer was not the issue before the Tenth Circuit, but rather whether reliance on the evidence available to State Farm at the time the Suggs' claim was denied was reasonable.

II. THE DECISION OF THE TENTH CIRCUIT DID NOT INFRINGE ON THE PETITIONERS' RIGHTS ARISING FROM THE SEVENTH AMENDMENT OF THE UNITED STATES.

The thrust of the Seventh Amendment is to preserve the right to a jury trial as it existed when the Bill of Rights was adopted. *See Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979). In order to determine a litigant's rights under the Seventh Amendment, therefore, a court must look to the common law for guidance. *Slocum v. New York Life Insurance Co.*, 228 U.S. 364 (1913). An examination of the common law demonstrates the propriety of the Tenth Circuit's decision.

This Court has long recognized that where the uncontradicted facts, submitted by affidavit, support only

one conclusion, a court is entitled to enter judgment without need for a trial. *See Fidelity & Deposit Co. v. United States,* 187 U.S. 315 (1902). Indeed, the Federal Rules of Civil Procedure are replete with mechanisms by which a case can be decided by a judge, without resort to a jury trial; Rule 12(b)(6) (failure to state a cause of action upon which relief can be granted); Rule 12(c) (judgment on the pleadings); Rule 56 (summary judgment). Other rules allow the court to ignore the findings of a jury; Rule 59(a) (new trial); Rule 59(e) (amended judgments). These rules are designed to eliminate claims and judgments which are not supported by the law or the facts. Similarly, a jury's award, not supported by the evidence or the law, must be set aside.

The decision of the Tenth Circuit did not infringe upon the Petitioners' rights under the Seventh Amendment but, instead, reversed a portion of the jury's award which was inconsistent with the law and the facts. Its decision is consistent with decisions rendered at common law. Where, as here, an issue has been properly raised, such as by motion for directed verdict, an appellate court is free to review the evidence to determine whether there was sufficient evidence so as to allow the case to go to the jury, as such a decision raises only a question of law. 5 *Moore's Federal Practice,* 38.08[5] pp. 38-59 (1987). *See Galloway v. United States,* 319 U.S. 372 (1943). The Tenth Circuit acted within this ambit, reviewing the evidence solely to determine whether there was substantial evidence of bad faith. It concluded there was not because it found substantial evidence to support a conclusion that reasonable minds could find there was no coverage.

III. THE DECISION OF THE TENTH CIRCUIT, IN ACCORD WITH THE ERIE DOCTRINE, PROPERLY APPLIED THE LAW OF NEW MEXICO.

The Tenth Circuit's opinion is not only consistent with, but is mandated by, the law in New Mexico. Petitioners' *Erie* challenge is, again, based on their misperception of the Tenth Circuit's opinion. The Tenth Circuit did *not* find that there was substantial conflicting evidence on the issue of bad faith, but only on the issue of coverage. Since there was sufficient evidence on which a jury could have found there was no coverage, it naturally follows that State Farm's denial was not unreasonable.

A similar issue was before the New Mexico Supreme Court in *Anderson v. Dairyland Insurance Co.*, 97 N.M. 155, 637 P.2d 837 (1981), discussed in Section I, *supra*. As noted there, the New Mexico Court held that where an insured was not entitled to a directed verdict on the issue of coverage, the question of punitive damages should not be submitted to the jury.

A directed verdict on the issue of coverage could not have been rendered in favor of the Suggs, because there was substantial evidence from which reasonable minds could have found the Suggs intentionally burned their trailer for profit. Since the reasonable men and women of a jury could have so found, *Anderson* required a ruling that State Farm was not unreasonable in coming to the same conclusion.

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CONCLUSION

The Petitioners' description of the nature of the Tenth Circuit's opinion is inaccurate. The Tenth Circuit did not find there was substantial conflicting evidence with regard to bad faith, but with regard to coverage. Because there was sufficient evidence to support a finding that there was no coverage, the Tenth Circuit simply held State Farm's refusal to pay the loss was neither unreasonable nor unfounded.

Respectfully submitted,

Stanley C. Sager
Sager, Curran, Sturges &
Tepper, P.C.
P. O. Box 3587
Albuquerque, New Mexico 87190
(505) 884-5100
Counsel of Record for Respondents

Matthew P. Holt and
Eric Scott Jeffries
Sager, Curran, Sturges
& Tepper, P.C.
P. O. Box 3587
Albuquerque, New Mexico 87190
(505) 884-5100
Co-Counsel for Respondents